

An Illinois retailer is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois retailer is liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by purchasers. (This is a GIL).

July 14, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated May 6, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Today I presented my upcoming business situation to your Chicago office and they suggested I contact you for a legal opinion. Here is the situation.

I am soon starting a division of my Illinois Corporation which will be a store on the Internet selling major appliances. My Illinois Corp. has a resale certificate which I intend to use to purchase my merchandise from an Illinois warehouse. The Illinois warehouse also sells to end users and I will be their first wholesale buyer for resale.

Please clarify the following assumptions and situations:

1. If I make an end user sale to an Illinois customer and buy the merchandise from an Illinois warehouse and ask them to drop ship the order to the Illinois customer am I or the Illinois warehouse responsible to the State of Illinois for the sales tax?
2. If my end user sale is to a customer in a state other than Illinois and I buy the merchandise from an Illinois warehouse and have them ship it to my customer, is there any sales tax due to Illinois or the other state?
3. If I make an end user sale to a customer in a State other than Illinois and I buy the merchandise from an Illinois warehouse and they contract to have the merchandise shipped to the customer from a warehouse located in the same State as the customer, is there any sales tax due?

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4. The Illinois warehouse I intend to use as my supplier has told me that they have an agreement with Michigan, Indiana, and Wisconsin to pay them sales tax for any end user orders they receive and ship directly into those States. However, if I take an end user order for a customer in those states and buy the merchandise from the Illinois warehouse and they deliver it to the customer, wouldn't the responsibility of paying the sales tax into those states be gone since I'm the Illinois warehouse customer and I'm buying for resale? Also, since I don't have any agreement in those states, isn't it correct that I wouldn't have to pay their sales tax either?

Thank you for your help in resolving these questions.

Section 130.605(b), 86 Ill. Adm. Code 130.605, enclosed, states that Retailers' Occupation Tax does not apply where the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in Illinois to a point outside Illinois, not to be returned to a point within Illinois, provided that such delivery is actually made. In addition, Section 130.605(c) states that Retailers' Occupation Tax does not apply where the seller ships goods by carrier or by mail, according to the terms of the agreement with the purchaser, and the seller delivers the goods from a point in Illinois to a point outside Illinois not to be returned to a point within Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Retailers' Occupation Tax. However, there may be a tax liability in the other state involved in the transaction. Illinois has no authority to interpret the sales tax laws of other states.

When persons or businesses purchase tangible personal property from vendors that they will resell to purchasers, they may purchase such items tax-free by providing their vendors with properly executed Certificates of Resale. Certificates of Resale are valid if they contain the information set forth in 86 Ill. Adm. Code 130.1405. If such persons or businesses fail to provide Certificates of Resale, the sales are presumed to not be for resale and sellers would incur Retailers' Occupation Tax and be required to charge the corresponding Use Tax to purchasers.

When Illinois retailers make retail sales in Illinois to Illinois purchasers, they incur Retailers' Occupation Tax on such sales and must collect the corresponding Use Tax from purchasers. This is true even if such retailers have the tangible personal property that is sold drop shipped to purchasers in Illinois. The companies that drop ship such tangible personal property are not the sellers and do not incur a tax liability in such a situation. As such, Illinois retailers must charge tax absent an exemption.

The Department has determined that the most important element of selling occurs when a seller accepts the purchaser's offer to buy. Consequently, selling is deemed to occur where the purchase order is accepted by the seller. It is the rate imposed by a jurisdiction at that location that will determine the proper tax rate. The location of the purchaser, or the point at which title passes to

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the buyer, is immaterial. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is also immaterial if the sale occurs through purchase order acceptance in an Illinois jurisdiction. See the enclosed copy of 86 Ill. Adm. Code 270.115.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk

Enc.